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S.B. CIVIL WRIT PETITION NO.7296/2007
(Rahim Khan Vs. State of Rajasthan & Ors.)

Date of Order :: 6th November 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. K.S.Yadav, for the petitioner.

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Having heard learned counsel for the petitioner and having perused the material placed on record, this Court is clearly of the view that this writ petition could only be rejected as an ill-conceived attempt to invoke writ jurisdiction of this Court.

It is submitted that the petitioner Rahim Khan had been issued patta in relation to the land in question on 05.07.1988 (Annex.P/1) but then, the brother of the petitioner Chand Khan, was sought to be extended patta No.30 on 27.08.1996 (Annex.P/2) by the Gram Panchayat in relation to one-half portion of the land that had already been granted to the petitioner; that there had been a public interest litigation that went up to the Supreme Court and the Hon'ble Supreme Court issued directions to the Collector, Sirohi to invite public offers in relation to the plots which were subject matter of public litigation and to settle the same to the highest bidder or any person who is eligible thereto in accordance with law; that the petitioner finding some likelihood of interference in relation to

the land comprised in patta granted to him, approached the Gram Panchayat that has certified on 10.07.2005 (Annex.P/4) that the patta granted to the petitioner is intact and is not included in the list of pattas cancelled by the Collector.

It is contended that the Sub-Divisional Officer, Mount Abu has now issued an auction notice on 24.10.2007 (Annex.P/6) wherein the land of the petitioner is included and thus the petitioner is sought to be deprived of his property without due process of law and without any fault on his part. Learned counsel for the petitioner has referred to item No.8 in the auction notice dated 24.10.2007 (Annex.P/6) stating the name of the brother of the petitioner and contended that the land stated under such item No.8, though shown in the name of the brother of the petitioner, is in fact the land belonging to the petitioner under patta dated 05.07.1988 (Annex.P/1) and, therefore, auction proceedings in relation to the land belonging to the petitioner deserve to be quashed, the petitioner's title being never in dispute in the earlier litigation that went up to the Hon'ble Supreme Court or in any other litigation.

The frame of the petition, the contention urged, and the reliefs claimed make it clear that granting of any relief to the petitioner is dependent on inquiry essentially into the questions of fact if the auction notice (Annex.P/6) has at all been issued

in relation to the land belonging to the petitioner; and such inquiry essentially calls for determination of fundamental question if the patta Annexure P/2 granted to Chand Khan is in relation to the land granted to the petitioner under patta (Annex.P/1) or any part thereof; and that requires determination of another question if patta (Annex.P/1), has validly been granted and remains in force ? All these questions are obviously required to be adjudicated upon only after appreciation of relevant evidence in a properly constituted proceedings and not in the extra-ordinary writ jurisdiction of this Court that is essentially meant for protection of existing legal right. Existence of any legal right of the petitioner and infringement thereof by the respondents being not available on record, the matter does not require consideration in the writ jurisdiction.

Being not inclined to entertain the matter in the writ jurisdiction, this Court would not make any comment on the merits of the grounds sought to be urged by the petitioner.

Exercise of writ jurisdiction in this matter is refused; and the writ petition is rejected.

(DINESH MAHESHWARI), J.

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